CHAPTER- IV

THE CONSTITUTION OF INDIA, JUDICIARY AND RIGHTS OF PRISONERS

4.1. INTRODUCTION

In the past days, the prisoners were outlaws. They were condemned and hated by the people throughout the world. Those days are gone and there is no iron curtain between a prisoner and the Constitution of India. In pre-independent India, when the citizen did not have any of the fundamental freedoms, it was not possible to think of the under trial prisoner’s right. But, in independent India, since the Constitution of India is adopted and the people have their fundamental rights guaranteed, prisoner’s rights also began to draw the attention of the legislators, jurists and the judges. In the early days of post independent era, the court did not adopt the liberal attitudes towards prisoner’s claims of various freedoms concomitant to the fundamental rights. Lot of changes has taken place since. The courts appear to be in a position of implementing the human right concepts in favour of prisoners in letter and spirit. Punishment in civilized societies must not degrade human dignity of flesh and spirit. The rule of law as recognized in a number of instances on prisoner’s right that they must be treated like human beings and their treatment must conform to the basic standards of humanity and fairness. Recognition of the inherent dignity and of the equal and in alienation right of all members of the society is the freedom, justice and peace in
the world. A society cannot be recognized as a civilized society unless it treats the prisoners with sympathy and affection. This treatment is not possible till the society recognizes and accepts their basic human rights and the fundamental rights. A prisoner, be he a convict or under trial or a detune, does not cease to be a human being. Even when lodged in jail, he continues to enjoy all his basic human rights and fundamental rights including the right to life guaranteed to him under the Constitution of India. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners shall retain the residue of the Constitutional rights. The Universal Declaration of Human Rights, 1948 stipulates that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Article 21 of the Constitution of India, recognizes that the right to life includes a right to live with human dignity and not mere animal existence, and strengthens this mandate. Thus, a prison atmosphere can be accepted as civilized only if it recognizes the basic human rights and the constitutional rights of the prisoners and makes efforts for the effective and meaningful enjoyment of the same by means of prison reforms.

4.2. RIGHTS OF PRISONER GUARANTEED UNDER THE INDIAN CONSTITUTION

The Indian Parliament has created and adopted good number of legislation on administration of criminal justice system of the country. Even though, the improvement of the prison system coming under State list, various Constitutional

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as well as criminal legislation deals with the prison administration in the country. The brief legislative history of the prison Human Right law is as follows.

4.2.1. CONSTITUTION OF INDIA

Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. Under the Constitution, it was held that there is no total deprivation of Prisoner’s rights of life and liberty, i.e. A convict is entitled to the right guaranteed by Article-21 of the Constitution of India, that a person (whether he is a national or a foreigner), shall not be deprived of his life and personal liberty, and prohibits any inhuman, cruel or any degrading treatment, except according to procedure established by law.

Thus Article-21 of the Constitution of India, also provides for, the right against unlawful arrest and detention; right to privacy, right to bail (also provided in the Part-IV of the Constitution of India), to the prisoner, as the court considers this right as an important part of personal liberty, because a man on bail had a better chance to prepare or present his case, than the remanded one in custody. The ‘safe keeping’ in jail custody is the limited jurisdiction of the jailer. Article-14 gives the right to equality and equal protection before laws. Therefore, prisoners too have their own rights. If any excesses committed on a prisoner, by the police is considered as a violation of rights and it warrants the attention of the legislature and judiciary. The right to meet friends, relatives and lawyers are provided under Article- 14 & -21 of the Constitution of India. Such rights are reasonable and non-arbitrary. Even prison regulations recognize the right of
prisoners to have interview with a legal adviser necessary, in a reasonable manner. Right to free legal aid is also provided under Articles-14 & 21 of the Constitution of India. Under Article-19 of the Constitution of India, many freedoms are being guaranteed to the citizens of India, by the Constitution of India, Among these freedoms, a prisoner is deprived of the “freedom of movement, throughout the territory of India”, “freedom to reside and to settle”, and also the “freedom to practice any profession, occupation, trade or business”, due to the condition of incarceration. But, “freedom of speech and expression”, “freedom to become member of an association” and also the right to acquire, hold and dispose property are enjoyed by the prisoners even they are behind bars, within the limitations of the prison. The Article-20(1) of the Constitution of India, protects the person from ex post facto laws or retroactive criminal legislation; i.e. (imprisonment is not authorized by law at the time when he committed the alleged act and for that act he was convicted and sentenced after the trial); i.e., when at the time, he committed the crime, if no conditions of harsh labour was prescribed by the court, then, it cannot be enacted or inflicted upon him, for which the imprisonment is prescribed. Under Article-20(2), it has been provided that no person shall be put into trouble twice, for the same offence, (rights against double jeopardy) i.e. the principle of nemo debet vis vexari. Article-20(3) of the Constitution of India, provides for the protection against ‘testimonial compulsion’, i.e. the protection against compulsion to be a witness is only confined to persons accused of an offence. A right against self-
incrimination is given under this. Article- 22(4) to (7) provides special safeguards for the protection of prisoners’ rights. A prisoner has the right to be informed about the grounds on which he was arrested, under Article-22(1) of the Constitution of India. The prisoner also has the right to consult and to be defended by a lawyer under this article.

4.2.2. THE CRIMINAL PROCEDURE CODE, 1973

The Criminal Procedure Code, 1973 provides, under Sec 50, 55 and 73, the right of information of grounds of arrest; under Sec 49, the right against unnecessary restrain of arrested person is provided; in Sections 53, 56, 57 &76, the right to be produced before a magistrate without delay to avoid arbitrary detention is contained; the right to be released on bail is provided under Section 50(2), 167, 436, 437 & 438; under Section 54, the right to medical examination is provided; under Sections 303 & 304, the right to counsel and legal aid is provided; the right to fair and speedy investigation is given under Section 309. There are a large variety of rights provided to every accused person during the trial intended to guarantee a fair trial and to avoid the innocent persons to be punished by the system. Therefore, it is worth to note the famous Blackstone’s ratio which is underlaid principle in Indian Judiciary i.e., "better that ten guilty persons escape than that one innocent should not suffer”89.

4.2.3. THE INDIAN EVIDENCE ACT, 1872

The Section-101 of the Indian Evidence Act, 1872 states that, in every criminal trial, the accused is presumed to be innocent till proved guilty and the benefit of doubt is given in favor of the accused. If a person desires the court to give judgment according to the legal right or in accordance with the facts, which he asserts, then the burden is on him to prove that such facts exist. The Sections-25 & 28 states that, after the confession of evidence to a police officer makes the police inadmissible to torture the accused during interrogation.

4.2.4. INDIAN PENAL CODE, 1860

The Sections-330 & 331 states that, the causing of hurt, in order to extort confession is a punishable offence; and under Section-348 it has been stated that, wrongful confinement to extort confessions is an aggravated crime. In Section-29 of the IPC, the Indian Police Act and Police Manuals prescribe certain limitation to the exercising of police powers and attempt to regulate police conduct in their interaction with citizens.

4.3. JUDICIARY AND PRISONERS RIGHTS:

Human rights are those we possess by virtue of being human. They are natural rights, i.e., rights we possess by nature, not by law (although they may be, and should be, protected by law). They are not rights granted to us by any government, and so they cannot be taken away by any government, regardless of what laws it may pass and what degree of violence it may employ to enforce its
laws. (However, governments can, and should, legislate to protect human rights.) These rights include (in the words of Thomas Jefferson) the rights to life, liberty and the pursuit of happiness (in whatever form we think best).

People who are detained or imprisoned do not cease to be human beings, no matter how serious the crime of which they have been accused or convicted. The court of law or other judicial agency that dealt with their case decreed that they should be deprived of their liberty, not that they should forfeit their humanity. A society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and prove services and of recourses made available to them. It’s is the human life that necessitates human rights. Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. Thus every right is a human right as that helps a human to live like a human being. Even if the person is deprived some of his rights due to commission of some wrongs, he is entitled to their rights unaffected by the punishment for wrongs. Especially when the principles and objectives of criminology and penology are acquiring a human face the enforcement of human rights assume a very great relevance. Simply because a person is under a trial or convicted, his rights cannot be discarded as a whole.

Human rights are founded in the heart and mind of every citizen who in common effort should labour to gather to create a world in which fundamental

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rights and freedoms can be realized for all citizens. The people of the world in the charter of United Nations (U.N) have reaffirmed faith in Fundamental human rights, in the dignity and work of human person. One of the purposes laid down in Article 1 of the United Nations Organization (U.N.O) is to promote and encourage respect for human rights and for fundamental freedoms of all. To achieve this object, the United Nations (UN), General Assembly adopted Universal Declaration of Human Rights (UDHR) on December 10, 1948 to promote respect for and to secure universal and effective recognition and observance of these rights and freedoms. Article 3 of the declaration provides to everyone the right to life, liberty and security of person. Article 5 outlaws torture, or cruel, in human degrading treatment or punishment. Article 8 provides that no one shall be subjected to arbitrary arrest, detention or exile. Article 10 provides for fair public hearing by impartial tribunals. Accused shall be presumed to be innocent unless proved guilty and he shall not be punished under ex post facto laws. Arbitrary interference with his privacy, family, home or correspondence or attack on his honour or reputation shall not be allowed.91

4.3.1. PRISONERS OF THE HUMAN RIGHTS

The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. India

ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice.

The central provisions relating to corporal punishment and the rights of prisoners are found in Articles 7 & 10(2). Article 7 provides that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Concurrently, Article 10(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” In its general comment on Article 7, the United Nations Human Rights Committee stipulated that there is no definition of the concepts of Article 7 but that distinctions depend on the nature, purpose and severity of the treatment applied, that “the text of article 7 allows of no limitation”, and that “the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime...” This includes “prolonged solitary confinement of the detained or imprisoned person [which] may amount to acts prohibited by Article 7”.

In its concluding observations of state reports and under its communications procedure, the United Nations (UN), Human Rights Committee has found that various acts of corporal punishment inflicted on prisoners and detainees amount to violations under Articles 7 and 10. The majority of these are still routinely practiced in India. These include the whipping or flogging of prisoners; use of solitary confinement for lengthy periods as a disciplinary measure; using
methods of restraint such as shackles; and holding prisoners on “death row” for extended periods, inducing mental anguish. In the case of *Patterson Matthews v. Trinidad and Tobago*, the Human Rights Committee requested that the State forward information regarding whether the administering of 20 lashes was sanctioned by law. In India, as mentioned, Section 46 Clause 12 of the Prisons Act allows the Jail Superintendent to punish any prisoner by whipping him/her not more than 30 times, among other alternatives. This is a clear violation of Articles 7 and 10 of the International Covenant on Civil and Political Rights (ICCPR). The legal obligations imposed on India are supplemented by three sets of UN guidelines on the treatment of prisoners. The United Nations Standard Minimum Rules for the Treatment of Prisoners, expressly provide that: “corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.” The Rules also state that “no prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.”

Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment prohibit the use of torture or to cruel, inhuman or degrading treatment or punishment on any person under

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detention or imprisonment and no circumstances may be invoked as a justification for such treatment. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers. The Prisons Act 1894 and the respective state jail manuals require immediate amendment so as to ensure that Jail Superintendents follow fair and just procedure while determining punishment for a prison offence. Secondly, the provision for corporal punishment should be done away with to ensure that such law is in conformity with international standards on the treatment of prisoners.

4.3.2. PRINCIPLES OF RIGHTS OF PRISONERS

The Prisoners or Accused rights derive from two principles, they are as under: Firstly, Prisoners are also human beings. Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner. This includes rights that are related to the protection of human dignity as well as those for the development of the prisoner into a better human being. Secondly, because prisoners depend on prison authorities for almost all of their day to day needs and the state possesses control over their life and liberty and mechanism of rights springs up to prevent the authorities from abusing their power.91
4.4. RIGHTS OF PRISONERS: JUDICIARY AND THE CONSTITUTION OF INDIA

“Imprisonment does not spell farewell to fundamental rights”92 The Indian Socio-legal system is based on Non-violence, mutual respect and human dignity of the individuals, if a person commits any crime; it doesn’t mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. Even the prisoners have human rights because the prison torture is not the “last drug in the Justice Pharmacopoeia” but “a confession of failure to do justice to living man.” For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment.93 In the Constitution of India, there is no specific guarantee of Prisoner’s Rights. But there are certain rights given under Part-III of the Constitution of India which are available to the prisoners too, because a prisoner remains a ‘person’ in the prison. A “Prisoner” is a person who is deprived of his personal liberty, due to the conviction of a crime, and imprisonment is the most common method of punishment provided by all legal systems. Imprisonment makes the prisoner repent about his past conduct. The judiciary protects the rights of prisoners and recognizes their rights. They are protected from torture and solitary confinement. There are certain statutes in the Constitution which provides that certain rights of the prisoners are enforced, like, Prisoners Act, 1900; Prisoners (Attendance in Courts) Act, 1955; Prison Act, 1894 etc. There are also Prison and Police Manuals, which have certain rules and

safeguards for the prisoners, and it is an obligation on the prison authorities to follow these rules. According to the Universal Declaration of Human Rights, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and should act towards one other in a spirit of brotherhood”94 When the courts sentence a person to a term of imprisonment they deprive him of his liberty but not of his other freedoms.95 Prisoners are still persons entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all the requirements of due process. Lawful imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen, a retraction justified by the considerations underlying penal system. But though his rights may be diminished by environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution of India and the prisoners. In sum, there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution of India that are of general application. A prisoner does not shed basic constitutional rights at the prison gate and the interest of inmates in freedom from imposition of serious discipline is a liberty entitled to due process protection. Every prisoner’s liberty is of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him is then only the more substantial conviction of a crime does not render one a non-person

whose rights are subject to the whim of the person administration and therefore the imposition of any serious punishment within the prison administration and therefore the imposition of any serious punishment within the prison system requires procedural safeguards. Of course, a hearing need not be held before a prisoner is subjected to some minor deprivation\textsuperscript{96}.

Article 21 of the Constitution of India guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person whether he is a national or foreigner. Any violation of this right attracts the provisions of Article 14 of the Constitution of India which enshrines right to equality and equal protection of law.

In addition to this, the question of cruelty to prisoners is also dealt with specifically by the Prison Act, 1894. If any excesses are committed on a prisoner, the prison administration is responsible for that. Any excesses committed on a prisoner by the police authorities not only attract the attention of the legislature but also of the judiciary. The Indian judiciary, particularly the Supreme Court in the recent past has been very vigilant against encroachments upon the human rights of the prisoners.\textsuperscript{97}

The courts in India have also laid down specific rules and guidelines in regard to matters like the right to physical protection in \textit{re D.B.M Patnaik v. State of Andra Pradesh}\textsuperscript{98}, protection against physical assault in \textit{Sunil Batra v. Delhi}

\textsuperscript{96}Per Mr. Justice Douglas in Charles Wolff (1974) 41 L. Ed. 2d 495.
\textsuperscript{97}Jaswal Dr. S. Paramjit&Jaswal. Dr. Nishitha, “Human Rights and the Law”, APH Publishing Corporation, New Delhi, Pg.181.
\textsuperscript{98}AIR 1974 SC 2092.
Administration and others\textsuperscript{99} case, restrictions on handcuffing and bar fetters in Prem Shankar Shukla v. Delhi Administration\textsuperscript{100} case, on solitary confinement in Sunil Batra v. Delhi Administration and others\textsuperscript{101} as well as Kishore Singh v. State of Rajasthan\textsuperscript{102} case, the right to speedy trial in Hussainara Khatoon and Others v. Home Secretary, Bihar, Patna\textsuperscript{103} case, freedom of expression in Pandurang Swami v. State of Andra Pradesh\textsuperscript{104} case and press interviews in Prabha Dutt v. Union of India\textsuperscript{105} case etc. The Supreme Court issued directions regarding the procedure to be followed when a person is arrested. In Joginder Kumar v. State of Uttar Pradesh\textsuperscript{106} and others, the Court referred to the National Police Commission’s finding that 60% of all arrests were either unnecessary or unjustified and laid four requirements to be strictly followed;

1. The right of the arrested person to request that a friend, relative or other person be informed of his arrest and the place where he is detained.

2. The duty of the police officer to inform the arrested person of this right.

3. An entry to be made in the police station dairy as to who was informed of the arrest.

4. A police officer making an arrest should record in the case dairy the reasons for making the arrest, implying there by that every arrest by the police has to be justified.

\textsuperscript{99}AIR 1978 SC 1675.
\textsuperscript{100}AIR 1980 SC 1535.
\textsuperscript{101}AIR 1980 SC 1579.
\textsuperscript{102}AIR 1981 SC 625.
\textsuperscript{103}AIR 1979 SC 1369.
\textsuperscript{104}AIR 1971 AP 234.
\textsuperscript{105}AIR 1982 SC 6.
\textsuperscript{106}AIR 1994 SC 1349.
The following are the rights of the prisoners which has been given both constitutional status as well as judicial recognition in order to achieve the absolute object of Punishment. The rights have been discussed as follows:-

4.4.1. RIGHT TO LEGAL AID

The talk of human rights would become meaningless unless a person is provided with legal aid to enable him to have access to justice in case of violation of his human rights. This a formidable challenge in the country of India’s size and heterogeneity where more than half of the population lives in far-flung villages steeped in poverty, destitution and illiteracy. Legal aid is no longer a matter of charity or benevolence but is one of the constitutional rights and the legal machinery itself is expected to deal specifically with it.

The basic philosophy of legal aid envisages that the machinery of administration of justice should be easily accessible and should not be out of the reach of those who have to resort to it for the enforcement of their legal rights. In fact legal aid offers a challenging opportunity to the society to redress grievances of the poor and thereby law foundation of Rule of Law. In India, Judiciary has played an important role in developing the concept of legal aid and expanding its scope so as to enable the people to have access to courts in case of any violation of their human rights. In the case of M.H. WadanraoHoskot v. State of Maharashtra\textsuperscript{107}, the Court held that the right to legal aid is one of the ingredients of fair procedure. The right to free legal services is clearly an essential ingredient

\textsuperscript{107}AIR 1978 SC 1548;
of reasonable fair and just procedure for a person accused of an offence and it is implicit in the guarantee of Article 21 of the Constitution of India. The State Government cannot avoid its constitutional obligation to provide free legal service to poor accused by pleading financial or administrative inability. The state is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state. If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, for want of legal assistance, there is implicit in the court under Article 142 read with Article 21 & 39-A of the Constitution of India, power to assign council for such imprisoned individual for doing complete justice. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so required, assign competent counsel for the prisoners defense, provided the party doesn’t object to that lawyer.

Statutory provision of Free Legal Aid service to Accused: - Under Criminal Procedure Code, 1973 provision has been made for legal aid to accused at State expense in certain cases. Section 304 of Criminal Procedure Code is incorporated in view of the personal liberty guaranteed by Constitution of India under Article 22 of the Constitution of India. Section 304 thus runs as follows:- Where, in a trial before the Court of Session, the accused is not represented by a
pleader, and where it appears to the court that the accused has not sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the State. The High Court may, with the previous approval of the State Government make rule providing for-

The mode of selecting pleaders for defence under sub-section(1); The facilities to be allowed to such pleaders by the Courts; The fee payable to such pleaders by the Government and generally for carrying out for the purpose of sub-section (1). The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other courts in the State as they apply in relation to trials before the Courts of Session.

4.4.2. RIGHT TO SPEEDY TRIAL

Right to speedy trial is a fundamental right of a prisoner implicit in Article 21 of the Constitution of India. It ensures just, fair and reasonable procedure. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less right of accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. In the case of Hussainara Khatoon (I) v. State of Bihar, a shocking state of affairs in regard to the administration of justice came forward. An alarmingly large number of men and women, including children are behind prison bars for years awaiting trial in the court of

\[108\] AIR 1979 SC 1369
law. The offences with which some of them were charged were trivial, which, even if proved would not warrant punishment for more than a few months, perhaps a year or two, and yet these unfortunate forgotten specimens of humanity were in jail, deprived of their freedom, for periods ranging from three to ten years without as much as their trial having commenced. The Hon’ble Supreme Court expressed its concern and said that: “What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind the bars not because they are guilty; but because they are too poor to afford bail and the courts have no time to try them”. One reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pretrial detention is our highly unsatisfactory bail system. This system of bail operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting them released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the magistrate about their solvency for the amount of the bail and where the bail is with sureties as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties. In Hussainara Khatoon (II) v. Home Secretary, State of Bihar,¹⁰⁹ the Court while dealing with the cases of under trials who had suffered long incarceration held that a procedure which keeps such large number of people behind bars without trial so long cannot

¹⁰⁹AIR 1979 SC 1360.
possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Article 21 of the Constitution of India. In Mathew Areeparmti and other v. State of Bihar and other\textsuperscript{110}, a large number of people were languishing in jails without trial for petty offences. Directions were issued to release those persons. Further, the court ordered that the cases which involve tribal accused concerning imprisonment of more than 7 years should be released on execution of a personal bond. In the case where trial has started accused should be released on bail on execution of a personal bond. In case where no proceedings at all have taken place in regard to the accused within three years, from the date of the lodging of First Information Report, (Sec. 154 of Cr.PC) the accused should be released forthwith under Section.169 Criminal Procedure Code. If there are cases in which neither charge-sheet (Sec. 173 of Cr.PC) have been submitted nor investigation has been completed during the last three years, the accused should be released forthwith subject to reinvestigation to the said cases on the fresh facts and they should not be arrested without the permission of the magistrate. In the case of Raj Deo Sharma v. The State of Bihar\textsuperscript{111}, the question before the court was whether on the facts and circumstances of the case, the prosecution against the petitioner is to be quashed on the ground of delay in the conduct of trial. The petitioner has never suffered incarceration. His application for bail was ordered on the day he appeared before the Court and

\textsuperscript{110}AIR1984 SC1854.  
\textsuperscript{111}(1999) 7 SCC 507
presented the same. Allowing the appeal Supreme Court gave the following directions:

1. In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the court can proceed to the next step provided by law for the trial of the case.

2. In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.

3. If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case.
In *Shaheen Welfare Association v. Union of India and others*[^112], the court while delivering its judgment said that: In spite of such review, from the figures which we have cited above, it is clear that there is very little prospect of a speedy trial of cases under TADA (Terrorist and Disruptive Activities (Prevention) Act, 1987) in some of the States because of the absence of an adequate number of Designated Courts even in cases where a charge sheet has been filed and the cases are ready for trial. But when the release of under-trials on bail is severely restricted as in the case of Terrorist and Disruptive Activities (TADA), by virtue of the provisions of Section 20 (8) of Terrorist and Disruptive Activities (TADA), it becomes necessary that the trial does proceed and conclude within reasonable time. Where this is not practical, release on bail which can be taken to be embedded in the right of a speedy trial may, in some cases, be necessary to meet the requirements of Article 21. In *Raghubir Singh v. State of Bihar*[^113], the accused persons who were being tried for waging war against the state filed writ petitions under Article 136 (Special Leave Petition) before the Supreme Court for quashing the proceedings before the special judge on the ground of violation of their right to speedy trial under Article 21 of the Constitution of India. The court held that there was no delay in investigating and trial of their cases warranting the quashing of proceeding against them.

[^112]: [1996] 2 SCC 616
[^113]: (1986) 4 SCC 481.
4.4.3 RIGHT AGAINST SOLITARY CONFINEMENT, HANDCUFFING AND BAR FETTERS AND PROTECTION FROM TORTURE

Solitary Confinement (Se. 73 of IPC) in a general sense means the separate confinement of a prisoner, with only occasional access of any other person, and that too only at the discretion of the jail authorities. In strict sense it means the complete isolation of a prisoner from all human society. Torture is regarded by the police/investigating agency as normal practice to check information regarding crime, the accomplice, extract confession. Police officers who are supposed to be the protector of civil liberties of citizens themselves violate precious rights of citizens. But torture of a human being by another human is essentially an instrument to impose the will of the strong over the weak. Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. An arrested person or under-trial prisoner should not be subjected to handcuffing in the absence of justifying circumstances.

When the accused are found to be educated persons, selflessly devoting their service to public cause, not having tendency to escape and tried and convicted for bailable offence, there is no reason for handcuffing them while taking them from prison to court. In the case of *Prem Shanker Shukla v. Delhi Administration*\(^\text{114}\), the petitioner was an under-trial prisoner in Tihar jail. He was required to be taken from jail to magistrate court and back periodically in connection with certain cases pending against him. The trial court has directed

\(^{114}\text{AIR 1980 SC 1535.}\)
the concerned officer that while escorting him to the court and back handcuffing should not be done unless it was so warranted. But handcuffing was forced on him by the escorts. He therefore sent a telegram to one of the judges of Supreme Court on the basis of which the present habeas corpus petition has been admitted by the court. To handcuff is to hoop harshly and to punish humiliatingly.

The minimum freedom of movement, under which a detainee is entitled to under Art.19, cannot be cut down by the application of handcuffs. Handcuffs must be the last refuge as there are other ways for ensuring security. There must be material, sufficiently stringent, to satisfy a reasonable mind that there is clear and present danger of escape of the prisoner who is being transported by breaking out of police control. Even when in extreme circumstances, handcuffs have to be put on prisoner, the escorting authority must record contemporaneously the reasons for doing so. The judicial officer before whom the prisoner is produced has to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs and other ‘iron’ treatments and if he has been, the official concerned shall be asked to explain the action forthwith. In the case of *D.K. Basu v. State of West Bengal*\(^{115}\), the Court treating the letter addressed to the Chief justice as a writ petition made the following order: In almost every States there are allegations and these allegations are now increasing in frequency of deaths in custody described generally by newspapers as lock-up deaths. At present there does not appear to be any machinery to effectively deal with such allegations. Since this is an all India question concerning all States, it is desirable to issue

\(^{115}\)AIR 1997 SC 610.
notices to all the State Governments to find out whether they are desire to say anything in the matter. Let notices issue to all the State Government. Let notice also issue to the Law Commission of India with a request that suitable suggestions may be made in the matter. Notice is made returnable in two months from today. Custodial torture is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personally. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward. Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides no person shall be deprived of his life or personal liberty except according to procedure established by law. Personal liberty, thus, is a sacred and cherished right under the Constitution of India. The expression life or personal liberty has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 of the Constitution of India guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. The Court, therefore, considered it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:
1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made, it shall also he countersigned by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the
District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed; of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor-injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director of Health Services should prepare such a panel for all Taluk and Districts as well.

9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and in all the police control room it should be displayed on a conspicuous place, board.

In the case of *State of Andhra Pradesh v. Challa Ramkrishna Reddy & Ors*116, the matter was contested by the State of Andhra Pradesh that no damages could be awarded in respect of sovereign functions as the establishment and maintenance of jail was part of the sovereign functions of the State and, therefore, even if there was any negligence on the part of the Officers of the State, the State would not be liable in damages as it was immune from any legal action in respect of its sovereign acts. Both the contentions were accepted by the trial court and the suit was dismissed. On appeal, the suit was decreed by the High Court for a sum of Rs. 1,44,000/- with interest at the rate of 6 per cent per annum from the date of the suit till realisation. It is this judgment which was challenged in the appeal. The other question which was argued by the learned counsel for the parties with all the vehemence at their command was the question relating to the immunity of the State from legal action in respect of their sovereign acts. Supreme Court dismissed the appeal filed by the State. In the

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case of *Ajab Singh &Anr. v. State of Uttar Pradesh &Ors*\textsuperscript{117}, the court said that: We do not appreciate the death of persons in judicial custody. When such deaths occur, it is not only to the public at large that those holding custody are responsible; they are responsible also to the courts under whose orders they hold such custody. The court further said that the State of Uttar Pradesh is responsible in public law for the death and must pay compensation to the petitioners for the same. They shall also pay to the petitioners the costs of the writ petitions, quantified at Rupees ten thousand. In the case of *Arvinder Singh Bagga v. State of U.P. and Others*\textsuperscript{118}, the court observed that: Torture is not merely physical, there may be mental torture and psychological torture calculated to create fright and submission to the demands or commands. When the threats proceed from a person in Authority and that too by a police officer the mental torture caused by it is even graver. This clearly brings out not only highhandedness of the police but also uncivilized behavior on their part. The Supreme Court issued directions that the State of Uttar Pradesh will take immediate steps to launch prosecution against all the police officers involved in this sordid affair. They further awarded compensation to the petitioners.

**4.4.4. RIGHT TO MEET FRIENDS AND CONSULT LAWYER**

The horizon of human rights is expanding. Prisoner’s rights have been recognized not only to protect them from physical discomfort or torture in the prison but also to save them from mental torture. In the case of *Sunil Batra(II) v.*

\textsuperscript{117}AIR 2000 SC 3421.

\textsuperscript{118}( 1994) 4 SCC 602.
Delhi Administration, the Supreme Court recognized the right of the prisoners to be visited by their friends and relatives. The court favoured their visits but subject to search and discipline and other security criteria. The court observed:

Visits to prisoners by family and friends are a solace in insulation, and only a dehumanized system can derive vicarious delight in depriving prison inmates of this humane amenity. In Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others, The Supreme Court ruled that the right to life and liberty includes the right to live with human dignity and therefore a detainee would be entitled to have interviews with family members, friends and lawyers without severe restrictions.

Court stressed upon the need of permitting the prisoners to meet their friends and relatives. The court held that the prisoner or detainee could not move about freely by going outside the jail and could not socialize with persons outside jail. The court said that: Personal liberty would include the right to socialize with members of the family and friends subject, of course, to any valid prison regulations and under Art. 14 & 21 such prison regulations must be reasonable and non-arbitrary. In the case of Joginder Kumar v. State of U.P and others, The court observed that whenever a public servant is arrested that matter should be intimated to the superior officers, if possible, before the arrest and in any case, immediately after the arrest. In cases of members of Armed Forces, Army, Navy or Air Force, intimation should be sent to the

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119 AIR 1980 SC 1579.
120 AIR 1981 SC 746.
Officer commanding the unit to which the member belongs. It should be done immediately after the arrest is affected. Under Rule 229 of the Procedure and Conduct of Business in Lok Sabha, when a Member is arrested on a criminal charge or is detained under an executive order of the Magistrate, the executive authority must inform without delay such fact to the Speaker.

As soon as any arrest, detention, conviction or release is affected intimation should invariably be sent to the Government concerned concurrently with the intimation sent to the Speaker/ Chairman of the Legislative Assembly/Council/Lok Sabha/ Rajya Sabha. The person who has been arrested have the right to have someone informed. That right of the arrested person, upon request, to have someone informed and to consult privately with a lawyer was recognized by Section 56(1) of the Police and Criminal Evidence Act, 1984.

That Section provides: Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.

These rights are inherent in Articles 21 & 22(1) of the Constitution of India and require be recognized and scrupulously protected. For effective enforcement of these fundamental rights, the court issues the following requirements:
1. An arrested person being held in custody is entitled, if he so requests to have one Friend/Relative or other person who is known to him or likely to take an interest in his welfare, told as far as is practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 & 22(1) and enforced strictly.

   It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with. The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf.

   The Directors General of Police of all the States in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest.

4.4.5. RIGHT TO REASONABLE WAGES IN PRISON

   Remuneration, which is not less than the minimum wages, has to be paid to anyone who has been asked to provide labour or service by the state. The payment has to be equivalent to the service rendered; otherwise it would be
‘forced labour’ within the meaning of Article 23 of the Constitution of India. There is no difference between a prisoner serving a sentence inside the prison walls and a freeman in the society. Whenever during the imprisonment, the prisoners are made to work in the prison; they must be paid wages at the reasonable rate. The wages should not be below minimum wages. In the case of *Mahammad Giasuddin v. State of A.P*\(^{122}\), the court directed the state to take into account that the wages should be paid at a reasonable rate. It should not be below minimum wages, this factor should be taken into account while finalizing the rules for payment of wages to prisoners, as well as to give retrospective effect to wage policy.

In the case of *People's Union for Democratic Rights v. Union of India*\(^{123}\), the Bench observed thus: We are, therefore, of the view that where a person provides labour or service to another or remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23 of the Constitution of India.

In the case of *State of Gujarat v. Hon'ble High Court of Gujarat*,\(^{124}\) A delicate issue requiring very circumspective approach mooted before the court. Whether prisoners, who are required to do labour as part of their punishment, should necessarily be paid wages for such work at the rates prescribed under Minimum Wages law.

\(^{122}\) AIR 1977 SC 1926.  
\(^{123}\) (1982) 3 SCC 235  
\(^{124}\) AIR 1998 SC 3164.
The court has before him appeals filed by some State Governments challenging the judgments rendered by the respective High Courts which in principle upheld the contention that denial of wages at such rates would fringe on infringement of the Constitution of India protection against exaction of forced labour.

A Division Bench in the case of Gurdev Singh v. State Himachal Pradesh,125 the court said that Article 23 of the Constitution of India prohibits ‘forced Labour’ and mandated that any contravention of such prohibition shall be an offence punishable in accordance with law.

The court had no doubt that paying a pittance to them is virtually paying nothing. Even if the amount paid to them were a little more than a nominal sum the resultant position would remain the same. Government of India had set up in 1980 A Committee on jail reforms under the Chairmanship of Justice A.N. Mullah, a retired judge of the Allahabad High Court. The report submitted by the said Committee is known as ‘Mulla Committee Report’. It contains a lot of very valuable suggestions, among which the following are contextually apposite.

All prisoners under sentence should be required to work subject to their physical and mental fitness as determined medically. Work is not to be conceived as additional punishment but as a means of furthering the rehabilitation of the prisoners, there training for work, the forming of better work habits, and of preventing idleness and disorder, Punitive, repressive and afflictive work in any form should not be given to prisoners. Work should not become

1251992 Cr.L.J 2542.
drudgery and a meaningless prison activity. Work and training programmes should be treated as important avenues of imparting useful values to inmates for their vocational and social adjustment and also for their ultimate rehabilitation in the free community. Rates of Wages should be fair and equitable and not merely nominal or partly. These rates should be standardized so as to achieve a broad uniformity in wage system in all the prisons in cash State and Union Territory.

The court finally gave the following observations:

1. It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.

2. It is open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose.

3. It is imperative that the prisoner should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations. We direct each State to do so as early as possible.

4. Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose we direct all the State
Governments to fix the rate of such interim wages within six weeks from today and report to this Court of compliance of this direction.

5. State concerned should make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

4.4.6. RIGHT TO EXPRESSION

In *State of Maharashtra v. Prabhakar Panduranga*¹²⁶, the court held that the right to personal liberty includes the right to write a book and get it published and when this right was exercised by a detenu, its denial without the authority of law, violates Article 21 of the Constitution of India.

In the case of *R. Rajagopal alias R.R. Gopal and Another v. State of Tamil Nadu and Others*¹²⁷, the petitioner raises a question concerning the freedom of press vis-a-vis the right to privacy of the citizens of this country. It also raises the question as to the parameters of the right of the press to criticize and comment on the acts and conduct of public officials.

The court held that the petitioners have a right to publish, what they allege to be the life-story/autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorization. But if they go beyond that and publish his life story, they may be invading his right to privacy and will

¹²⁶ AIR 1986 SC 424.
¹²⁷ (1994) 6 SCC 632.
be liable for the consequences in accordance with law. Similarly, the State or its officials cannot prevent or restrain the said publication.

4.4.7. RIGHT TO VOTE

The under trial prisoners should get their franchise right. They should take part in election. Prisoners should be allowed to participate in election to cast their vote in favour of a candidate. So, right to franchise is a democratic right and this must be exercised inside or outside the jail with the escort party.

Article 326 of the Indian Constitution mandates adult suffrage, which means that every person who is a citizen of India and who is not less than 18 years of age can vote. However, India is one of the few countries in the world which does not allow prisoners or under-trials to vote.

Section 62(5) of the Representation of the People Act, 1951 (ROPA) prohibits all those who are confined in a prison or are in lawful custody of the police from voting.

The afore mentioned provision has been challenged on the grounds of Article 14 of the Constitution of India. In *Anukul Chandra Pradhan v. Union of India & Anr*\(^ {128}\), the Supreme Court observed that in view of the settled law on the point, it must be held that the right to vote is subject to the limitations imposed by the statute Representation of the People Act, 1951 (ROPA). Further, in *Mahendra Kumar Shastri v. Union of India and Anr*\(^ {129}\), the Supreme Court observed that the restriction imposed by the Representation of the People Act,

\(^{128}\) (1996) 6 SCC 354
\(^{129}\) (1984) 2 SCC 442
1951 (ROPA) was not unconstitutional and was in public interest. In a decision of the Patna High Court, *Jan Chaukidar (Peoples Watch) v. UOI &Ors*\(^{130}\), the Court said that the right to vote is a statutory right.

The law gives it, and the law can take it away. These views of the Courts against prisoners’ suffrage have been upheld in more recent cases such as *Rama Prasad Sarkar v. The State of West Bengal &Ors*\(^{131}\).

In the year 2010, the West Bengal Government lobbyed for prisoners to get voting rights. In Bihar as well, efforts were made in the same year to ensure that under-trial prisoners lodged in various jails of the state got voting rights and took part in the elections to the State Assembly which were to be held in October-November.

Though there are Court judgments talking at length about the human rights of prisoners and under-trials, there has been little change as regards the stand on their voting rights. India must reconsider the blanket ban on prisoners’ suffrage and consider involving the Election Commission (Article 324-329 of the Constitution of India) along with the Courts in order to ensure a more progressive law on the issue.

**4.4.8. RIGHT TO VISIT AND ACCESS BY FAMILY MEMBERS OF PRISONERS**

The Supreme Court of India has ruled in *Sunil Batra (II)*\(^{132}\), as under:

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\(^{130}\) 2004 (2) BLJR 988

\(^{131}\) AIR 2011 SC 86

\(^{132}\) AIR 1080 SC 1579
1. A sullen, forlorn prisoner is a dangerous criminal in the making and the prison is the factory.

2. Visits to prisoners by family and friends are a solace in isolation and only a dehumanized system can deprive vicarious delight in depriving prison inmates of this humane amenity.

3. The whole rehabilitative purpose of sentencing is to soften not to harden the latent elements of criminal mind and this will be promoted by more such meetings.

   i. Therefore, prison authorities are under a duty to make due provisions for the admission of such persons into prisons, with whom prisoners may desire to communicate.

   ii. Such allowances shall be subject to considerations of security and discipline of the prison for which, the visitors shall disclose their true identity and address to the jailer and they can be searched for any prohibited articles.\textsuperscript{133}

\textbf{4.4.9. RIGHT AGAINST BEING DETAINED FOR MORE THAN THE PERIOD OF SENTENCE IMPOSED BY THE COURT}

All prisoners have the right not to be detained for a day more than what the trail court has mentioned in the sentence.\textsuperscript{134} The prison officials are therefore under a duty to maintain proper registers with numbered pages showing when

\textsuperscript{133}Section 41(2), Prisons Act, 1894.

\textsuperscript{134}Mrs. Veena Sethi \textit{vs State Of Bihar AndOrs} (AIR 1983 SC 339)
each prisoner is to be released and inform them of their due date of released and inform them of their due date of release well in advance.¹³⁵

4.4.10. RIGHT TO REFORMATIVE PROGRAMMES

The treatment of prisoners sentenced to imprisonment has to aim at establishing in them the will to lead law abiding and self supporting lives after their release and to enable them to do so. The treatment as prisoners through reformatory programmes has to be such as will encourage their self-respect and develop in them the sense of responsibility. Under this umbrella, prisoners have the rights to Education, Counseling, Learning of Meaningful skills, vocational training, meditation etc.¹³⁶

As a matter of the reality, the following are the measures incorporated in the jail daily routine to facilitate the inmates to correct, reform and thereafter rehabilitate themselves as good citizens on their release:-

Remission system and Premature release, Temporary release facilities on parole and furlough, Panchayat system, Canteen facilities, Interview, letter correspondence and remission system, Reading room and library facilities, Sports, games and cultural facilities, Wage earning scheme, Training in modern techniques of Agriculture, Horticulture, and Sericulture, Sheep rearing, Dairy farming, Wormi-culture, Manufacture of Organic Manure, Nursery Seedlings, Vocational Training in various crafts of their choice.

¹³⁵Section 12(2), Prisons Act, 1894.
¹³⁶AIR 1980 SC 1579.
The prison authorities have been striving to make the prison inmates economically self-reliant through training them in various vocational and trade crafts and bring out their latent skills. The following vocational training programmes have been incorporated in the jail daily routine. For imparting training, the following industries are functioning\(^\text{137}\):-


4.4.11. RIGHT TO COMPENSATION

There is no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life and personal liberty. But the Supreme Court has ruled out any person whose fundamental right to life and illegal deprivation of personal liberty violated, is entitled to claim monetary compensation from the State.

\(^{137}\text{http://www.mysore.nic.in/dept_prison.htm} \text{ last accessed on 12 April 2012.}\)
Rudal Shah v. State of Bihar\textsuperscript{138}, is an instance of breakthrough in Human Rights Jurisprudence. The Court granted monetary compensation of Rs.35,000 against the Bihar Government for keeping a person in illegal detention for 14 years even after his acquittal. The Court departed from the traditional approach, ignored the technicalities while granting compensation. In another case\textsuperscript{139}, a member of the Legislative Assembly of Jammu and Kashmir was arrested by the police \textit{malafide} and he was not produced before the Magistrate within the required time.

Holding that his fundamental rights under Article 21 & 22 (1) of the Constitution of India were violated, the Court observed that when there is \textit{malafide} arrest, the invasion of constitutional or legal right is not washed away by his being set free and in ‘appropriate cases’ the Court has jurisdiction to compensate the victim by awarding suitable monetary compensation.

The Court awarded Rs.50,000 as monetary compensation by way of exemplary costs to the petitioner to compensate him. Even the National Human Rights Commission has recommended the award of compensation in cases where it has found that human rights of prisoners have been violated.

\textbf{4.4.12. RIGHT TO BE REPRESENTED BY LAWYER} \textsuperscript{140}

The accused/Prisoner has right to engage lawyer of his choice. If the accused has no sufficient means to engage a lawyer the court should take steps to

\textsuperscript{138} A.I.R. 1983 SC 1086
\textsuperscript{139} Bhim Singh Vs. State of Jammu & Kashmir [1985 (4) SCC 677]
\textsuperscript{140} Section 40 of Prisons Act, 1894.
engage state defence counsel or legal aid counsel at state expenses who will represent the accused/Prisoner.

Every prisoner has the right to have interviews with his/her lawyer at any reasonable hour after taking appointment from the Superintendent. The conversation can be within the sight but outside the earshot of any officer, if the officer is deputed to be present there. The Supreme Court has ruled lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners, subject to discipline and other security considerations.\textsuperscript{141}

4.4.13. RIGHT TO BAIL

Justice Krishna Iyer remarked that: “….. The subject of bail belongs to the blurred area of criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion.

The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden of public treasury all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process.”\textsuperscript{142}

Thus release on bail is crucial to the accused as the consequences of pre-trial detention are given. If release on bail is denied to the accused it would mean that though he is presumed to be innocent till the guilt is proved beyond the

\textsuperscript{141}Supra p. 29.
\textsuperscript{142}Gudikanti Narasimhulu And Ors v. Public Prosecutor, AIR 1978 SC 429.
reasonable doubt he would be subjected to the psychological and physical deprivation of jail life. The jail accused loses his job and is prevented from contributing effectively to the preparation of his defense.

Therefore, where there are no risks involved in the release of the arrested person it would be cruel and unjust, to deny him bail. The law of bails “has to dovetail two conflicting demands namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence, the presumption of innocence of an accused till he is found guilty”.

Where the person is arrested for a bailable offence or if security proceedings are initiated against him/her under the Code of Criminal Procedure, 1973, he/she can, as a matter of right, ask to be released on bail.143

Under section 50(2) of Code of Criminal Procedure, It is the duty of the arresting police officer or the duty of the magistrate to inform the person of the offence with which he/she is being charged and also whether it is bailable or not.

4.4.14. RIGHT TO PARTICIPATE IN COURT PROCEEDINGS

The accused/undertrial prisoner has right to participate in the proceeding from date of production to pronouncement of judgment including answering charges and accused statement. The accused/undertrial prisoner has the right for open trail as the court is open to all.

But in some cases presiding officer has to conduct cases in camera. When the trial begins the evidence should be taken in presence of accused as per Section 273 of Code of Criminal Procedure with the exception of Section 205, 291, 292, 293, 317, 391 of Code of Criminal Procedure.

4.4.15. RIGHT TO HAVE HEALTHY ENVIRONMENT AND TIMELY MEDICAL SERVICES

Every prisoner has the right to clean and sanitized environment in the jail free from any kind of disease-ridden or disease-causing atmosphere. It is the responsibility of the medical officer of the jail to ensure that the environment of the jail is sanitized.\textsuperscript{144}

It is the responsibility of the medical officers and the superintendent to ensure that prisoners suffering from contagious diseases like tuberculosis or any contagious diseases or any kind of wound, injury are separated from the healthy population and treated appropriately so that the infection does not spread to other healthy prisoners.\textsuperscript{145}

Every prisoner has the right to be attended to and treated for any disease from which he/she is suffering at the time of admission to the jail or which he/she contracts while in jail. A prisoner has the right not to be forcibly discharged from the jail against his/her will if he/she is suffering from any acute

\textsuperscript{144}Section 13 of Prisons Act, 1894.
\textsuperscript{145}Section 24(2) of Prisons Act, 1894.
or dangerous disease and until the medical officer certifies that he/she is fit to be discharged.\textsuperscript{146}

Every prisoner has the right to be medically examined by the medical officer before being transferred to any other jail. He/she can be transferred only once the medical officer certifies that the prisoner is free from any serious illness which would otherwise have rendered transfer dangerous.\textsuperscript{147} Every prisoner confined to a solitary cell, either as punishment or for any other reason, has the right to be visited and examined by a medical officer or medical subordinate at least once in a day.\textsuperscript{148}

Prisoners, who are undergoing rigorous imprisonment as part of their sentences or are engaged in hard labour on their own, have the right to be medically examined by the medical officer from time to time and their weight examined and recorded in their history tickets once in every fortnight by the medical officer.\textsuperscript{149}

If the medical officer after any periodical examination of any such prisoner is of the opinion that the prisoner is not fit for the particular kind of hard labour, then he shall not be employed for such labour but shall be placed on such other kind of labour as the medical officer may consider suitable for him.\textsuperscript{150} The

\textsuperscript{146}Section 26(3) of Prisons Act, 1894.
\textsuperscript{147}Section 26(2) of Prisons Act, 1894.
\textsuperscript{148}Section 29 of Prisons Act, 1894.
\textsuperscript{149}Section 35(2) of Prisons Act, 1894.
\textsuperscript{150}Section 35(3) of Prisons act, 1894.
Superintendent has the power to send a prisoner for special treatment to a hospital or asylum outside the jail if the condition of the prisoner so demands.\textsuperscript{151}

4.5. RIGHTS OF WOMEN PRISONERS

The Women prisoners shall be rigidly secluded from men prisoners and the undertrial women shall be kept apart from convicts. As far as possible women adolescents must be kept away from under trial prisoners, habituals from non habituals, and prostitutions and procuresses from women who have hitherto lived a respectful life. The women’s ward shall be situated, as not to be overlooked by any part of the men’s jail, and there shall, as far as possible, be a separate hospital for sick women prisoners within or directly adjoining the women’s enclosures.

The following facilities are available to women prisoners\textsuperscript{152}:-

1. A women prisoner shall be supplied with shikakai or soap or any suitable substitute at Government cost for washing her hair on every Sunday at the rate of 28 grams per head.

2. A woman prisoner shall be allowed to retain her glass or conch bangles.

   Where religion custom makes wearing of bangles obligatory, women prisoner requesting for the supply of bangles at Government cost shall be supplied with two of suitable type of unbreakable bangles for each hand and shall be allowed to retain these bangles at the time of releases.

   The glass bangles shall not be supplied at Government cost.

\textsuperscript{151}Section 39A of Prisons Act, 1894.

3. Every women prisoner who desires to do so shall be allowed to apply a 
vermilion mark (Kumkum) to her forehead, and the vermilion should be 
supplied at the Government cost.

4. Every women prisoner who desires to do so shall be allowed to wear 
nose ring, earrings and mangalasutra or its equivalent.

5. Every women prisoner shall be supplied suitable clothes for sanitary and 
hygienic purposes during menstruation period. Any women prisoner 
who desires to do so shall be permitted to buy sanitary napkins (i.e. 
sanitary towels) at her own cost.

6. Every women prisoner shall be examined by the Medical Officer of the 
prison in the presence of the Women Jailor/Matron and such 
examinations will be conducted on readmission after bail, parole, and 
furlough. In case of the woman Jailor/Matron suspects pregnancy the 
woman prisoner concerned shall be sent to Civil Hospital for 
examination and report.

7. Every woman prisoner shall be examined once in a month by the 
Medical Officer and his observations shall be recorded in the medical 
sheet of the prisoner concerned.

8. When a woman prisoner (convict or under trial) is found or suspected to 
be pregnant at the time of her admission or at any time thereafter, the 
Medical Officer shall report the fact to the Superintendent.
As soon as possible arrangements shall be made to get such prisoner medically examined at the hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery etc.

After ascertaining necessary particulars a report shall be sent to the Deputy Inspector General of prisons, stating that the date of her admission, term of sentence, the date of release, duration of pregnancy, probable date of delivery etc.

9. The gynecological examination of pregnant prisoner shall be at done at the Hospital. The proper pre-natal and post-natal care shall be taken according to the requirements of each case as premedical advice.

10. The births in prison shall be recorded in the register in the local birth registration office. But the fact that the child has been born in a prison should not be recorded in the birth register. As far as circumstances permit, all responsible facilities for the naming rights of the children born in prisons may be extended.

11. A woman prisoner admitted to a prison with a child depending on her for nursing or otherwise for whom no friend or relative can be found to take charge, or to whom a child is born while in prison, shall be allowed to retain the child with her till the child completes the age of four years.

12. Children of women prisoners should be weaned away from the mothers between the ages of 3 and 4 years, taking into consideration the
development of the child, its attachment to the mother and the other relevant factors.

The children of a prisoner under sentence of death, or other who have to be removed from the prison on attaining the age of four years shall be made over to their nearest relative but where no such relative is found, they shall be handed over to Officer-in-charge of the nearest institution set up under the Juvenile Justice Act for the care of destitute children after obtaining orders of the competent authority. The same procedure shall be followed in the case of a woman prisoner dying in person and leaving young children whose relative cannot be found.

4.6. RIGHT TO INFORMATION ABOUT PRISON RULES

Copies of jail rules (Prison Rules 1974) should be exhibited both in English and Local Language in some place to which all persons in prison have access. If necessary these rules should be explained orally at the time of admission.

The Supreme Court of India has ruled that the State Governments should take steps to prepare in Hindi and other languages a prisoner’s handbook of rights and circulate copies to be kept in prisons to bring legal awareness to the inmates.

The information to be given should concern the disciplinary requirements of the prison, authorized methods of seeking information and making complaints
and such other matters as are necessary to enable prisoners to understand both their rights and obligations and adopt themselves to the life of a prison.

4.7. RIGHT TO PAROLE

A prisoner may be released on parole (Sec.56 of the Prisons Act 1963) for such period as the Competent Authority referred to in the rules in its discretion may order, in case of serious illness, or death of any member of the prisoners family or of his nearest relatives or for any other sufficient cause.

4.8. RIGHT NOT TO BE PUNISHED WITH SOLITARY CONFINEMENT FOR ANY PRISON OFFENCE

Solitary Confinement (Sec.73 of IPC) in a general sense means the separate confinement of a prisoner, with only occasional access of any other person, and that too only at the discretion of the jail authorities.

In strict sense it means the complete isolation of a prisoner from all human society.

Keeping a person in solitary confinement for prolonged periods of time can result in irreparable psychological harm to the prisoner.

When such a person is released, the society is at a greater risk of being harmed by him/her. Society is best protected when prisoners leave prisons as better human beings rather than less able to act as responsible citizens.
Prisons thus become antithetical to their traditionally professed role of protecting the society. In Sunil Batra (I) v. Delhi Administration\textsuperscript{153}, the Supreme Court has time and again ruled out that no prisoner can be put away in solitary confinement as a matter of routine.

Solitary confinement is by itself a substantive punishment, which can be imposed only by a court of law.

Prison authorities cannot inflict this punishment according to their own whims and caprices without the express order of the court.

4.9. SPECIAL RIGHT OF YOUNG PRISONERS TO BE SAFEGUARDED FROM ADULT PRISONERS

All offenders under the age of 21 have the right to be lodged separately from all adult prisoners and the jail officials are duty bound to ensure that no adult prisoner is allowed into his ward after sunset on any ground whatsoever.

Yong offenders also have the right to be transferred into any adult ward as punishment. Prisoners under age of 21 who have not arrived at the age of puberty have the right to be lodged separately from those who have.

4.10. RIGHT TO PROVIDE LODGING BASED ON CLASSIFICATION OF INMATES

All female prisoners have the right to be lodged away from the direct contact and vision of all male prisoners, either in separate prisons or in a separate building of the same prison complex.

\textsuperscript{153}AIR 1978 SC 1675.
Both male and female under trial prisoners have the right to be lodged separately from male and female convicts respectively. First time under trial and convict prisoners involved in minor offences have the right to be lodged separately from habitual criminals and those involved in serious offences.

Adolescent and non habitual female prisoners have the right to be lodged separately from older and habitual prisoners of bad characters.

Civil prisoners have the right to be lodged separately from criminal prisoners. Inequality and discrimination on the basis of social and financial status of prisoners is prohibited. Affluent criminals cannot be treated with luxury while indigent are treated as pariahs.154

4.11. RIGHT TO EVOKE THE WRIT OF HABEAS CORPUS AGAINST PRISON AUTHORITIES FOR EXCESSES

When every attempt to seek redress for one’s genuine complaint fails, the prisoner can straightaway appeal to the High Court155 (To Referred Article 226 of the Constitution of India) for the issuance of a writ of Habeas corpus.

This right would be available to any prisoner against any action of the jail authorities which is not commensurate with the sentence passed by the court or other actions expected of the prison authorities.

If this action fails to bring in the required change, the prisoner can move petition to the Supreme Court156 for the protection of his fundamental rights.

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154 Rakesh Kaushik Vs. BI VIG Superintendent Central Jail, New Delhi. (AIR 1981 SC 1767)
155 Article 226 of the Constitution of India.
156 Article 32 of the Constitution of India.
This is a guaranteed Fundamental Right of every citizen under the Constitution of India.

Thus, we find that the Indian judiciary led by the Supreme Court exercises vast powers of judicial review in respect of the legislative and executive functions of the state.

The Supreme Court and the High Court not only act as the arbitrators to determine disputes that may arise between the units of Government but also protect and enforce the fundamental rights of the citizens against the arbitrary actions of the State.

They also interpret the laws made by the legislature in determining the validity of legislative and executive action of the State. It is a unique feature identified, probably only with the Indian higher judiciary that it has the power to determine even the validity of the constitutional amendments, which power has been arrogated to itself by the judiciary, by implication. Further the power of judicial review is vested not only in the constitutional Courts like the Supreme Court and the High Court’s but also in quasi-judicial or constituted courts like tribunals. The most striking example of judicial activism of the Supreme Court of India is its interpretation of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

The court has achieved its most fruitful and beneficial activism in personal liberty cases. It has been the result of a reinterpretation of Article 21 of the Constitution of India, the pithiest provision of the Constitution of India which
simply states: “no person shall be deprive of his life or personal liberty except according to the procedure established by law”.

Starring with the land mark judgment in Menaka Gandhiv. Union of India\textsuperscript{157}, the Court by gradual phases has for all practical purposes introduced the concept of “due process of law” in the expression “procedure established by law” in that Article, allowing the Court to review the unreasonableness of any or an order affecting a person’s individual liberty.

The Court itself has admitted that the American doctrine of due process has been introduced in the conservative text of Article 21 of the Constitution of India\textsuperscript{158}.

The court’s progressive attitude in interpretation of the ‘life and personal liberty’ has led to the establishment of the principle that the right to equality including the right against arbitrariness and discrimination under Article 14, the right to freedoms under Article 19 and the right to life and personal liberty under Article 21 of the Constitution of India are interpreted, intertwined with each other and that they cannot be applied in isolation with other rights.

This principle helps in testing the legislative or executive action of the State not only on the ground that it violates only one fundamental right but also the entire aforementioned fundamental rights.

All these judicial developments lead to the conclusion that all the express fundamental and Human Rights recognized by the American Constitution\textsuperscript{159}, has

\textsuperscript{157} AIR 1978 SC 597

\textsuperscript{158} Ranjan Dwivedi v. Union of India, [AIR. 1983 SC 624]
been read and interpreted as part and parcel of the right to life and personal liberty guaranteed under Article 21 of the Indian Constitution of India.

In a way such judicial behaviour of the Indian Supreme Court can be described as the judicial amendment of Article 21 in Part III of the Indian Constitution of India.

The Indian Constitution aims at the establishment of a welfare State. Part IV of the Constitution of India consists of number of directives to the State in the form of the Directive Principles of State Policy.

However, these Directive principles have been recognized as fundamental to the governance of the country.

The Supreme Court of India has made immense contribution through its activism, in transforming many of the Directive principles into fundamental rights, thus making them justifiable in a court of law. In a way, what the courts cannot do certain things directly; they have tried to do indirectly.160

4.12. CONCLUSION

The days are gone when prisons were dungeons where prisoners were lodged to pass their days in dark and dingy cells. The prisons are no more the institutions designed to achieve only the retributive and deterrent aspects of punishment.

159 In the Bill of Rights i.e., the first 10 Amendments made to the U.S. Constitution in 1791.
They are now the places where the inmates are lodged not as forgotten and forsaking members of the society but as human beings who have to go out in their surroundings as well behaving and reformed persons.\textsuperscript{161}

The souls behind the bars cannot be denied the same. It is guaranteed to every person by Article 21 of the Constitution of India and not even the State has the authority to violate that Right.

A prisoner, be he a convict or under-trial or a detune, does not cease to be a human being. They also have all the rights which a free man has but under some restrictions.

Just being in prison doesn’t deprive them from their fundamental rights. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights.

The importance of affirmed rights of every human being needs no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens.

Supreme Court has gone a long way fighting for their rights. However the fact remains that it is the police and the prison authorities who need to be trained and oriented so that they take prisoner’s rights seriously.